

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | | |
|-------------|------------------|---|---------------------------|
| APPLICANT: | HUBBARD, et al. |) | |
| | |) | |
| TITLE: | PROXIMAL CONICAL |) | |
| | COLLAR |) | |
| | |) | INFORMATION DISCLOSURE |
| SERIAL NO.: | |) | STATEMENT UNDER 37 C.F.R. |
| | |) | § 1.97 |
| FILED: | October 9, 2001 |) | AND STATEMENT REGARDING |
| | |) | PREVIOUSLY UNDISCLOSED |
| EXAMINER | |) | REFERENCE |
| | |) | |
| ART UNIT: | |) | |

10/09/01
09/974782
U.S. PTO

Commissioner for Patents
Washington, D.C. 20231

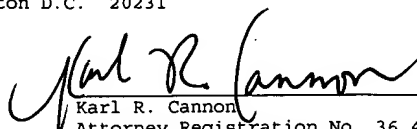
Sir:

Please find, pursuant to 37 C.F.R. § 1.98(a)(1), the enclosed Forms PTO-1449 attached as Exhibits A, B, C and D, which contain a list of patents, publications, or other items that were previously disclosed in parent applications, either by applicant or by the Examiner. The patent owner respectfully invokes the Patent Office's obligation under 37 C.F.R. § 1.97 to consider these references and make them of record in the above-captioned application. While no representation is made that any of these references may be "prior art" within the meaning of that term under

CERTIFICATE OF EXPRESS MAILING

DATE OF MAILING October 9, 2001 EXPRESS MAIL LABEL NO: EK028958260US

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service on the date indicated above and is addressed to: Box Patent Applications, Assistant Commissioner for Patents, Washington D.C. 20231


Karl R. Cannon
Attorney Registration No. 36,468
Attorney for Patent Owner

35 U.S.C. §§ 102 or 103, the enclosed list of references is disclosed so as to fully comply with the duty of disclosure set forth in 37 C.F.R. § 1.56.

Moreover, while no representation is made that a specific search of office files or patent office records has been conducted or that no better art exists, the undersigned attorney of record believes that the references listed, together with any other references which may have been previously cited by or submitted to the Office, are the closest to the claimed invention (taken in its entirety) of which the undersigned is presently aware, and no art which is closer to the claimed invention (taken in its entirety) has been knowingly withheld.

In accordance with 37 C.F.R. §§ 1.97 and 1.98, a copy of each listed reference (or relevant portion thereof) which was not previously submitted to, or cited by, the Patent Office is also enclosed.

Statement of Relevance of References Listed
Unaccompanied by English Translation
Under 37 C.F.R. § 1.98 (a) (3)

DE A 3125657 (LINK) is believed to be potentially relevant to the above-captioned application because of the figures therein. Although the figures do not appear to teach or suggest the invention defined in any of the claims of the above-captioned application, the structural elements in the figures may appear to

be potentially relevant to some of the disclosure contained in the above-captioned application.

FR A 2,651,674 (BOLZE) is believed to be potentially relevant to the above-captioned application because of the figures therein. Although the figures do not appear to teach or suggest the invention defined in any of the claims of the above-captioned application, the structural elements in the figures may appear to be potentially relevant to some of the disclosure contained in the above-captioned application.

Statement Regarding Previously Undisclosed Reference,
and Statement Under 37 C.F.R. § 1.98(d) of
References Previously Disclosed

None of the references listed on the enclosed forms PTO Form-1449, except for the Kirshner reference as explained below, are required to be provided under 37 C.F.R. § 1.98(d), and are therefore not enclosed, because they were previously cited by or submitted to the Patent and Trademark Office in application numbers 08/274,956 (Exhibit B); 08/600,118 (Exhibit C); and 09/190,423 (Exhibit D), which are relied upon for an earlier filing date under 35 U.S.C. § 120.

It is noted that the Kirshner reference does not include bibliographic information on it. However, it is the patent owner's understanding that the Kirshner reference was publically disclosed prior to the priority date of the parent U.S. Patent No. 5,725,594

(hereinafter "'594 patent"), and the patent owner therefore requests that the examiner treat the Kirshner reference as a reference that predates the filing date of the earliest-filed predecessor application. However, it is noted that the claims of the '594 patent, and therefore the claims of the above-captioned application which are similar in scope through non-identical, remain valid over the Kirshner reference, at least in part because the Kirshner reference is cumulative of the references mentioned below in footnote 1.

The Kirshner reference is believed to be merely cumulative of several prior art references of record in the '594 patent,¹ and need not be disclosed for that reason. However, since others may later disagree with that assessment, the patent owner desires to have the Kirshner reference made of record such that a formal presumption of validity will attach with respect to it. This reference may have been omitted from the Information Disclosure Statements filed in the '594 patent through oversight, and the patent owner acknowledges that examination of the Kirshner reference may be required since the patent examiner has not before seen it.

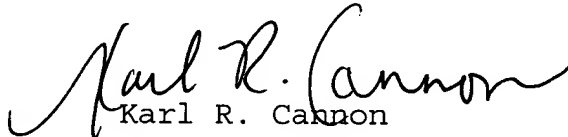
¹With respect to the claims of the '594 patent and the similar but nonidentical claims submitted in the above-captioned application, the Kirshner reference appears to be merely cumulative of several references made of record in the '594 patent, including German patent no. 3125657 (Link), U.S. Patent No. 4,944,762 (Link et al.), U.S. Patent No. 4,718,916 (Morscher), and French patent no. 2651674 (Bolze).

In any event, applicant has chosen to file the above-captioned application, which includes claims that are similar but not identical to those of the '594 patent, in order to make absolutely certain that the obligations of 37 C.F.R. § 1.56 have been complied with to overcome any potential adverse effect that the failure to disclose the Kirshner reference in the '594 patent might have on the claimed invention. The patent owner wishes to remove all doubt that its patent rights in the '594 patent, and therefore in the claims of the above-captioned application which are close but not identical to the '594 patent claims, are valid over the Kirshner reference.

Please charge any additional fees or credit any overpayment to Deposit Account No. 50-0836.

DATED this 9 day of October, 2001.

Respectfully submitted,



Karl R. Cannon
Attorney Registration No. 36,468
Attorney for Patent Owner

CLAYTON, HOWARTH & CANNON, P.C.
P.O. Box 1909
Sandy, UT 84091
Telephone: (801) 255-5335
Facsimile: (801) 255-5338